IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1567 OF 2006

HEMANT MADHUKAR TAPKIRE .. PETITIONER

Versus

DINESH DESHRAJ VERMA & ANR. .. RESPONDENTS

Mr. S. S. Kulkarni for petitioner

Mr. Deepak Jadhav for R-1

Ms. M. M. Deshmukh, APP

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 15/11/2006

P.C.

. The petitioner has challenged in this petition order dated 20/6/06 passed by II Adhoc Addl. Sessions Judge, Nashik in Criminal M.A. No.985/2004 for condoning the delay in preferring criminal revision application challenging the order dated 15/3/03 of issuing process passed by Chief Judicial Magistrate, Nashik.

2. It appears that the 1st respondent preferred criminal complaint against the petitioner under Section 138 of the Negotiable Instruments Act, read

with Section 420 of the Indian Penal Code, on the ground that the cheque issued by the petitioner was dishonoured on 21/1/03.

3. On 15/3/03 the learned Chief Judicial Magistrate issued process under Section 138 of the Negotiable Instruments Act. According to the petitioner on 5/5/2003 the petitioner appeared in the case and preferred an application being Exhibit-6 praying for copy of the complaint and all the documents relied on by the complainant. It is the petitioner's case that though the learned Judge allowed the application, respondent 1 failed to comply with the direction till 4/12/04. According to the petitioner on 4/12/04 respondent 1 supplied copy of the complaint and the documents relied upon by him. On 17/12/04, the petitioner preferred criminal revision application challenging the order of process. Along with the application the petitioner filed application being M.A. No. 985 of 2004 for condonation of the delay of 16 months and 18 days in preferring criminal revision application. The learned Sessions Judge rejected the application.

4. I have heard Mr. Kulkarni, learned counsel

appearing for the petitioner. Mr. Kulkarni, contended that the petitioner has made out sufficient cause for condonation of delay. He submitted that on 5/5/03 the petitioner had prayed that the complainant be directed to give all documents relied upon by him. However, the complainant failed to comply with that direction. It is only on 4/12/06 that the documents were supplied. Thereafter the petitioner filed revision application on 17/12/04. The learned counsel submitted that in the absence of the documents the petitioner could not have preferred revision application challenging the order of issuance of process. It is because the documents were supplied late that the petitioner could not prefer revision application in time and, therefore, in the interest of justice and in the facts and circumstances of the case, the learned Sessions Judge should have condoned the delay.

5. Mr. Kulkarni pointed out that in the companion matter the learned Judge has condoned the delay of sixteen months and eight days only because the petitioner had preferred an application for recall of process which he had not done in the instant case. The learned counsel contended that,

therefore, in the facts and circumstances of the case this court should set aside the impugned order and condone the delay.

6. I have heard the learned counsel appearing for the 1st respondent also. He submitted that there is no acceptable explanation given for condonation of delay. The entire blame is sought to be placed on the 1st respondent which is not justified. He submitted that the facts of the other case are different from the facts of the present case and hence delay should not be condoned.

7. I have considered the submissions advanced by both sides. In my opinion, in the interest of justice the learned Sessions Judge ought to have condoned the delay.

8. Admittedly the petitioner had made a request for supply of documents. He could get the documents only on 4/12/04 and immediately thereafter on 17/12/04 he has filed the revision. Hence the delay ought to have been condoned. In my opinion, it is not necessary to examine the question whether the 1st respondent should be blamed for non-supply of documents. This is a case

where delay deserves to be condoned in the interest of justice after saddling the petitioner with costs quantified at Rs.5,000/-. Hence the following order:

. Impugned order dated 20/6/06 passed by II Adhoc Addl. Sessions Judge, Nashik in Criminal M.A. No.985/2004 is set aside. Delay in preferring criminal revision application is condoned, on the condition that the petitioners pay costs quantified at Rs.5,000/- to the 1st respondent within a period of four weeks from today. Payment of costs is condition precedent to condonation of delay. Writ petition is disposed of.

. In the facts and circumstances of the case, hearing of criminal revision application is expedited.

. Petition is disposed of.

JUDGE.